

Birchfield v. North Dakota

579 U.S. ____ (2016)

Birchfield v. North Dakota

- Held: BREATH tests do not require a search warrant; BUT, BLOOD tests do.
- Accordingly: DUI Refusal charges violate the 4th Amendment when the refusal at issue is a BLOOD test refusal. Refusal charges based on breath tests remain constitutional.

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- This decision is unanticipated by Vermont's implied consent statute.
- 1202(b) provides that if a test is refused, it shall not be given. However, it also permits the use of the refusal as evidence in a prosecution for DUI.

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- Vermont's Implied Consent statute should be readdressed in light of *Birchfield*.
- Current unanswered questions:
 - Does the statutory right to refuse a blood test prevent even a blood test that is authorized by a judicially issued search warrant?
 - If a suspect may refuse a blood test even after a warrant, may the state use that evidence at a trial? *Birchfield* says it may, but, Vermont Supreme Court decisions suggest it may not.

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- Is it really the intent of the legislature that a blood test may be refused even after a search warrant has been issued by a judge?